

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

SHAWN P. ARMSTRONG, :
Petitioner, : Case No. 3:06cv087
vs. : JUDGE WALTER HERBERT RICE
WANZA JACKSON, WARDEN, :
Respondent. :

DECISION AND ENTRY OVERRULING PETITIONER'S OBJECTIONS
(DOC. #52) TO THE MAGISTRATE JUDGE'S SUBSTITUTED REPORT
AND RECOMMENDATIONS (DOC. #50); DECISION AND ENTRY
OVERRULING PETITIONER'S OBJECTIONS (DOC. #62) TO THE
MAGISTRATE JUDGE'S SUPPLEMENTAL REPORT AND
RECOMMENDATIONS (DOC. #56); SUBSTITUTED (DOC. #50) AND
SUPPLEMENTAL REPORTS AND RECOMMENDATIONS (DOC. #56)
ADOPTED; CERTIFICATE OF APPEALABILITY AND LEAVE TO
APPEAL IN FORMA PAUPERIS DENIED; JUDGMENT TO ENTER IN
FAVOR OF RESPONDENT AND AGAINST PETITIONER; TERMINATION
ENTRY

Based upon the reasoning and citations of authority set forth by Magistrate Judge Michael Merz in his Substituted (Doc. #50) and Supplemental Reports and Recommendations (Doc. #56), as well as upon a thorough *de novo* review of this Court's file and the applicable law, this Court concludes that the Petitioner's claims for habeas corpus relief are barred by the doctrine of procedural default, as a result of Petitioner's failure to file in timely fashion his memorandum in support of

jurisdiction in the Ohio Supreme Court. Accordingly, the Court overrules Petitioner's Objections (Doc. #52) to the Substituted Report and Recommendations (Doc. #50), and his Objections (Doc. #62) to the Supplemental Report and Recommendations (Doc. #56). The Court adopts the Substituted (Doc. #50) and Supplemental Reports and Recommendations (Doc. #56) of the Magistrate Judge.

Concluding that "that jurists of reason would [not] find it debatable whether the district court was correct in its procedural ruling" (*Slack v. McDaniel*, 529 U.S. 473, 484 (2000)), the Court denies Petitioner a certificate of appealability. Additionally, given that any appeal from the decision rendered herein would be objectively frivolous, the Court denies him leave to appeal in forma pauperis.

Judgment is to be entered in favor of Respondent and against Petitioner, dismissing petition for a writ of habeas corpus with prejudice.

The captioned cause is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton.

March 6, 2009

/s/ Walter Herbert Rice

WALTER HERBERT RICE, JUDGE
UNITED STATES DISTRICT COURT

Copies to:

Counsel of Record.